HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 384 of 2001
(Old No. 850 of 1991)

The New India Assurance Company ..... Appellant

Versus

Smt. Kausa Devi & another ..... Respondents

Dated: 27.9.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present appeal has been field against the judgment and award dated 18.6.1991 passed by the Motor Accident Claims Tribunal Pithoragarh.

Briefly stated that respondent no.1 has filed a claim petition under Section 110 of the Motor Vehicle Act, for grant of compensation on account of death of her husband Sri Chandra Singh in a motor vehicle accident. The petitioner alleged that her husband was employed as a Cleaner in Truck No. USZ 9499 which was owned by the opposite party Bhairab Singh. On 9.8.1990 at about 12.30 PM the truck met with accident near Gurna on Pithoragarh-Tanakpur road causing the death of Sri Chandra Singh. The petitioner has contended that the accident had taken place due to rash and negligent driving of the truck.

The petition has been contested by the opposite parties. Both the opposite parties filed written statement.

On the basis of pleadings of the parties the following issues were framed:

1. Whether the accident resulting in the death of Chandra Singh, Cleaner was caused due to rash and negligent driving of truck No. USZ 9499 by its driver?
2. Whether the terms and conditions of the Insurance policy have been violated? If so, its effect?
3. To what amount of compensation, if any is the claimant entitled?

The claims tribunal on the basis of ocular testimony of eyewitness P.W.2 Jasi Dutt Bhatt has held that the accident took place due to rash and negligent driving of the truck in question. The claims Tribunal has held that the deceased was employed as Cleaner in the truck. He assessed the monthly income of the deceased as Rs.600/- or Rs. 7,00/- per annum. The deceased was aged about 23 years at the time of accident. The claims Tribunal has assessed compensation of Rs.77,600/- and decreed the petition accordingly. Feeling aggrieved against the order the insurance company has preferred the present appeal.

The claims Tribunal on the ocular testimony of eye-witness of the accident P.W.2 Jai Dutt Bhatt has given categorical findings that the accident took place due to rash and negligent driving of the truck driver. The opposite parties have produced Sri Bhairab Singh as D.W.1, who is the owner of the truck. Admittedly he was not present at the time of accident. He admitted that Chandra Singh had died in the accident and he was employed as Cleaner on his truck.

The age of the deceased at the time of accident was 23 years and he was earning a sum of Rs.600/- per month. Thus keeping in view the age and income of the deceased the amount of compensation assessed by the Claim Tribunal is proper and justified. I find no illegality or infirmity in the order passed by the Claims Tribunal.

Admittedly the truck was insured with the appellant the New India Assurance Company at the time of accident and the trial Court has rightly held the insurance company liable for payment of compensation to the petitioner.

In view of the aforesaid fact, the appeal has no force and is hereby dismissed. No order as to costs.

(Rajesh Tandon J.)

27.9.2004
*Dhyani